IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3703 OF 2005

Kailash Narayan Darwatkar & Ors. ...Applicants

vs.

The State of Maharashtra ...Respondent

Mr.Abhaykumar Apte for the Applicants
Mr.K.V.Saste,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 21,2005.

P.C.:

1. Heard Counsel appearing for the parties. F.I.R. has been lodged against the Applicant at Swargate Police Station alleging commission of offence punishable under Sections 143,147,148,149,325,427,452,506, 395 read with Section 34 of the Indian Penal Code. The allegation is that the Applicants were armed with weapons like sword, sickle, stick etc. The allegation is regarding causing damage to large number of vehicles. The allegation is also regarding causing damage to the shop of the complainant and removal of cash amount of Rs.2000/- to Rs.3000/- from the said shop.

2. The application for anticipatory bail made by the Applicants has been rejected by the Sessions Court. The learned Counsel appearing for the Applicants submitted that is a gross delay in lodging the F.I.R. He pointed out that the allegations in the F.I.R. are made generally against the persons forming part of a large mob. He submitted that the

Applicants have attended the police station regularly and there is no need of custodial interrogation. The Application is opposed by the learned A.P.P. by pointing out seriousness of the allegations. He pointed out that the allegation against the Applicants is that they were carrying arms and damaged large number of vehicles.

3 . The Apex Court in a recent Judgment reported in (2003) 8 S.C.C. page no.77 (Bharat Chaudhary & another vs. State of Bihar and another) held that the gravity of offence and the need for custodial interrogation are the only factors which are required to be considered while deciding an application under Section 438 of Code of Criminal Procedure, 1973. If gravity of the aforesaid allegations made against the Applicants is considered, it cannot be said that as a result of the Applicants' attending the Police Station, custodial interrogation can be dispensed with. The Apex Court in another decision held that that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is armed with an order under Section 438.

4. Three accused were ordered to be enlarged on bail by the learned Sessions Judge. However, the ground given for granting them relief is that all of them were women. Hence, no case is made out. Application is rejected.

5. At this stage, the learned Counsel appearing for the

Applicants stated that the ad-interim relief earlier granted may be extended for a reasonable time as the Applicants desire to approach the Apex Court. This prayer is opposed by the learned A.P.P. for State.

6. Ad-interim relief granted on 14th June 2005 is extended for a period of three weeks from today subject to the condition that the Applicants will attend the concerned Police Station as and when called upon to do so and will cooperate with the Investigating Officer for the purpose of investigation.

JUDGE